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IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

ORDER

IN

S.B. Civil Second Appeal No.382/2005

Bhanwar Singh S/o Shri Guman Singh Rajput
...defendant-appellant

Versus

Smt. Meva Devi W/o Shri Chhitar Mal & Another
...plaintiff-respondents

AND

Arun Singh S/o Shri Bhanwar Singh Rajput
...proforma-respondent

Date of Order ::: 30.8.2006

Present

Hon'ble Mr. Justice Narendra Kumar Jain

Shri J.P. Goyal for defendant-appellant
Shri Bihari Lal Agarwal for plaintiff-respondents

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//REPORTABLE//

By the Court:-

Heard learned counsel for the parties.

The defendant-tenant has preferred this second appeal under Section 100 of the Code of Civil Procedure against the judgment and decree dated 16th of May, 2005 passed by the Additional District Judge No.4, Jaipur City, Jaipur, in Civil Appeal No.2/2004, whereby the appeal filed by the plaintiff-landlord was allowed in respect of the disputed portion of the house of the plaintiff-landlord, which was not rented out vide rent-note, but it was trespassed illegally by the defendant-tenant.

Briefly stated the facts of the second appeal are that the plaintiff-landlord filed a suit for eviction of the defendant-tenant from the rented premises, arrears of rent and for possession of the disputed portion of the

house, against the defendant-tenant in the lower court. It was pleaded that the plaintiff no.1 is the owner of Plot No.A-11, Nirman Marg, Sikar House Colony, Jaipur. The defendant-tenant took on rent one room on the first floor of the plot with facility of latrine at the rate of Rs.250/- per month, and executed a rent-note in favour of the plaintiff no.1-landlord. It was further pleaded in the plaint that on 10.5.1989, when the plaintiffs had gone to attend some programme at the residence of his brother Ramesh Chand, the defendant no.1-tenant with the help of defendant no.2 illegally occupied other rooms of Plot No.A-11 on ground floor as well as in the underground, the details of which were mentioned in the plaint, by getting the benefit of their absence. It was also pleaded that the defendant-tenant has committed a default in making the payment of rent and the plaintiffs are in need of rented premises reasonably and bona-fide, therefore, it was prayed that the suit of eviction in respect of the rented premises and of possession in respect of other portion of the house illegally occupied by the defendant-tenant, be decreed with mesne profit. The plaint was contested by the defendants. The lower court framed 12 issues. Issue no.3 was as to whether the defendant took forcefully the possession of the property as mentioned in Para 3 of the plaint on 29th of May, 1989 and the plaintiff-landlord is entitled to get a decree of mesne profit at the rate of Rs.1300/- per month. Issue no.7 was whether the plaintiffs are entitled to a decree of possession in respect of portion of the property

as mentioned in Para 3 of the plaint. Issue no.2 was in respect of default in making the payment of rent. Issue no.4 was in respect of personal bona-fide necessity of the plaintiff of the rented premises. Issues in respect of comparative hardship and partial eviction were also framed.

Both the parties led their evidence. Learned lower court decided Issue no.2 relating to default in making the payment of rent and Issue no.4 relating to personal bona-fide need of the plaintiff in respect of rented premises, against the defendants. Consequently the lower court passed a decree of eviction in respect of rented premises covered by rent-note Exhibit-1, as described in Para 1 of the plaint. Being aggrieved with the same, the plaintiffs filed first appeal before the first appellate court challenging the finding of the lower court in respect of Issues no.3 and 7. The first appellate court, vide its impugned dated 16.5.2005, decided both the Issues no.3 and 7 in favour of the plaintiffs and against the defendants and allowed the appeal of the plaintiffs and passed a decree in their favour in respect of the portion of the property as described in Para 3 of the plaint, which was illegally occupied by the tenant. Hence, this second appeal has been preferred on behalf of the defendant-tenant

Learned counsel for the defendant-appellants, Shri J.P. Goyal, contended that this was a suit for eviction against the defendant-appellants wherein a decree of eviction can only be passed in respect of the rented premises and not in respect of the property allegedly

occupied by the defendant-tenant illegally, as the proper remedy for the same is to file a suit for possession. He contended that the first appellate court committed a serious illegality in passing a decree in respect of that portion of the house described in Para 3 of the plaint, which was not covered under the rent-note (Exhibit-1), therefore, the judgment and decree passed by the first appellate court is liable to be set aside. He contended that the substantial question of law involved in the present case is as to whether the plaintiff is entitled to get a decree of possession of the property, which was not included in the rent-note in a suit for eviction. Therefore, he submitted that the appeal be admitted.

On the other hand, Shri Bihari Lal Agarwal, the learned counsel for the plaintiff-respondents contended that the present suit was not only for eviction of the tenant from the rented premises but it was also for possession in respect of the property described in Para 3 of the plaint, which was unauthorizedly occupied by the tenant in absence of the plaintiffs. The first appellate court has recorded a finding that the tenant illegally occupied the portion of the building described in Para 3 of the plaint and has rightly passed a decree against the defendants.

The Hon'ble Supreme Court in Patel Chandulal Trikamlal Vs. Rabri Prabhat Harji - AIR 1996 SC 532, while considering the matter in between the landlord and tenant involving similar controversy, passed a decree of eviction

against the tenant in respect of the piece of land illegally occupied by the tenant, which was not covered under the rent-note but was belonging to the landlord and was situated adjacent to the land at rent, in a suit for eviction itself. The relevant portion of the above judgment is reproduced as under:-

"6. It is contended before us that the above term in the rent note cannot be considered as a term of the tenancy because it does not relate to the land in respect of which the tenancy was created. It relates to the adjoining land. Hence, at the highest, it is a personal obligation cast on the tenant. We find it difficult to accept this contention. Clearly the tenancy of land was given for the purpose of tethering cattle. The tenancy was of a portion of an open piece of land which belonged to the landlord. Looking to the nature of the use to which the open land was to be put by the tenants, it was provided in the rent note that the tenant will use only the portion of the open land which was given to him, and will not use the open land lying beyond the limits of the land given to him on tenancy. The clear intention of the parties was to

ensure that the tenant only used the land demised to him and would not allow his cattle to stray beyond the demised land. For the same reason, it was also provided in the rent note that the tenant would fence the land. In this context, this is a condition which is imposed on the tenant as a condition of his tenancy. Looking to the purpose for which the tenancy was given, this is not just a personal obligation cast on the tenant not to trespass upon the adjacent land ...

7. Respondents in both the appeals have committed a breach of this term of the tenancy. The first appellate Court had, therefore, rightly passed a decree of eviction in favour of the appellants."

This Court in Bhagwanram Vs. Thakurji Shri Hanumanji Maharaj - 1989 (1) Rent Control Reporter 526, also considered similar controversy where the tenant illegally took the possession of another portion of building, and held as under:-

"10. The word "nuisance" is derived from French word "nuirs" which means to injure, hurt or harm. Anything injurious or

obnoxious to the community or to the individual as a member of it for which some legal remedy may be found is nuisance. Literally anything that causes annoyance or that works hurt or injury, harm or prejudice to an individual or the public or anything wrongfully done or permitted which injures or annoys another in the legitimate enjoyment of his legal rights would constitute nuisance. Encroachment or illegal possession by the defendant over the said portions of the trust property amounts to nuisance. Section 3(1)(d) of the U.P. (Temporary) Control of Rent and Eviction Act, 1947 is in parimateria with clause (d) of subsection (1) of Section 13 of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950. It has been held in Ganga Prasad v. Choube Jagdish Prasad, 1967 ALJ 708, that taking of possession of another part of the building belonging to the landlord in an assertion to a right of tenancy by the tenant amounts to creating nuisance within the meaning of Section 3(1)(d) of the U.P. Act. There is yet another aspect of the matter. The illegal encroachment of the aforesaid portions of the plaintiff's property has adversely and substantially affected its

interest within the meaning of last clause of Section 13(1)(d) of the Act. It has further been observed in 1967 ALJ 708 at page 710, as follows:-

"The assertion of the defendant that the kothri and the tin-shed were also the part of the tenancy to my mind is an act which is likely to affect adversely and substantially the landlord's interest in the premises let out to the defendant. In this view of the matter the case of the plaintiffs is covered by the first as well as the latter part of Section 3(d) of the Rent Control and Eviction Act. The contention of the learned counsel that unless some act in respect of the Tall itself was done it could not be said that the tenant has created a nuisance or done anything which would affect adversely and substantially the landlord's interest therein has not appealed to me. In my opinion on the finding of fact recorded by the two courts below that although tin-shed and kothri was not part of the tenancy still the defendant contended the same to be a part of the tenancy brought his case within the four corners of Section 3(d) of the Rent Control and Eviction Act."

This case has been affirmed in Jayanti Prasad v. Trilok Chand Jain, 1977 (1) RCR 17. On this ground also, the decree for ejectment deserves to be confirmed."

I have considered the submissions of the learned counsel for both the parties and minutely scanned the impugned judgment passed by both the courts below and also the citations referred to by the learned counsel for the plaintiff-respondents during the course of arguments.

The lower court passed a decree of eviction against the tenant in respect of rented premises covered by the rent-note. The first appellate court decided Issues no.3 and 7 in favour of the plaintiff and passed a decree of possession in respect of portion of the building which was illegally occupied by the defendant-tenant. The defendant was tenant in one room on first floor with latrine facility and while taking advantage of absence of the plaintiff-landlord, he illegally occupied some rooms on the first floor as well as in the underground of the same building belonging to the plaintiff-landlord. The first appellate court has recorded a finding in this regard that the tenant illegally occupied the said portion of the building as described in Para 3 of the plaint. The question of law urged by the learned counsel for the defendant-appellants has already been considered and answered in the above referred judgments of the Hon'ble Apex Courts as well as this Court. In those cases, referred above, a decree of eviction was passed against the tenant in respect of that portion of the building which was not covered by the rent-note and was illegally occupied by the tenant in the same building belonging to the plaintiff-landlord. Therefore, the contention of the learned counsel for the appellants cannot be accepted in view of the above

referred decisions of the Hon'ble Supreme Court as well as this Court. The learned first appellate court was right in deciding Issues no.3 and 7 in favour of the plaintiff-respondents and was right in passing a decree of possession in favour of the plaintiffs and against the defendants in respect of that portion of the building which was illegally occupied by the tenant. The question of illegal occupation of the portion of the building is purely a question of fact and even otherwise this finding of fact has not been disputed by the learned counsel for the appellants during course of arguments that he illegally occupied it.

If the fact of nuisance on the part of the tenant is established in the aforesaid circumstances then on the basis of established facts the court is empowered to pass a decree of eviction even if a specific ground of nuisance is not pleaded in the plaint, because the facts of nuisance are established and this is one of the ground in the Rajasthan Premises (Control of Rent & Eviction) Act, 1950 for eviction of the tenant. Clause (d) of sub-section (1) of Section 13 of the Act, 1950 prescribes that a decree of eviction against tenant can be passed if the court is satisfied that the tenant has created a nuisance or has done any act which is inconsistent with the purpose for which he was admitted to the tenancy of the premises or which is likely to affect adversely and substantially the landlord's interest therein. This Court in Bhagwanram Vs. Thakurji Shri Hanumanji Maharaj - 1989 (1) Rent Control Reporter 526 (supra) considered the meaning of "nuisance"

and held that literally anything that causes annoyance or that works hurt or injury, harm or prejudice to an individual or the public or anything wrongfully done or permitted which injures or annoys another in the legitimate enjoyment of his legal rights would constitute nuisance. If it is established on the basis of pleadings of the parties coupled with evidence in the case that tenant has encroached upon or illegally took possession over the adjacent portion of the rented portion or portions in the same building belonging to the landlord in the capacity of tenant, amounts to nuisance within the meaning of clause (d) of sub-section (1) of Section 13 of the Act, 1950. So far as the present case is concerned, the plaintiff filed a suit not only for eviction of the rented premises but for possession of the portion of the building illegally occupied by the tenant and specific Issues no.3 and 7 were framed in this regard and both the parties were allowed to lead evidence and on the basis of evidence the first appellate court recorded a finding in respect of Issues no.3 and 7 in favour of the plaintiff. Therefore, I do not find any reason to interfere in the judgment and decree passed by the first appellate court.

No substantial question of law is involved in this second appeal and the same is accordingly dismissed at admission stage itself with no order as to costs.

(Narendra Kumar Jain) J.